Hamilton Square 600 14th Street NW Suite 750 Washington DC 20005
T> 202-220-0400 F > 202-220-0401

February 12, 2003

Commissioner Jonathan Adelstein
Commissioner Michael Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; WC Docket No. 01-338 (*Triennial Review)*

Dear Commissioners Copps and Adelstein:

It is undisputed that broadband DSL providers that provide residential service require access to the linesharing UNE. This is true for carriers that use linesharing – such as New Edge, WorldCom, NTELOS, and Covad – and it is true for wholesale ISPs that rely on CLECs for DSL connectivity – like AOL, Earthlink, and AT&T – all of whom are on the record in this proceeding supporting preservation of the linesharing UNE. State commissions understand the benefits of linesharing, which is why NARUC is on the record calling for preservation of the linesharing UNE. Currently, Covad uses line sharing to provide broadband services to nearly 200,000 consumers nationwide. Other CLECs and ISPs serve tens of thousands more. Linesharing is the *only* technically, economically, and practically feasible means of providing residential broadband DSL service to consumers. That's why the four Bell companies all offer residential DSL via linesharing. Moreover, there is no question that the Commission's *Line Sharing Order* plays a key role in spurring the rapid deployment of DSL services – at last count, to the tune of over four thousand percent.[1] It is clear that, if the Commission eliminates the line sharing UNE, broadband CLECs will be forced to exit the residential broadband market.[2]

[1] Covad launched DSL commercially before any of the Bell companies, even though the Bells had DSL technology available to them for over a decade. When the FCC created the line sharing rules in 1999, its own data showed 115,000 ADSL lines in service. Today, as a direct result of the line sharing rules, the FCC reports 5.1 million ADSL lines in service – an increase of over four thousand percent in less than three years.

[2] Indeed, the DSL carrier NTELOS recently offered a similar view, stating that if line sharing were eliminated, "NTELOS would not be able to offer residential DSL and some business DSL at a competitive price, eliminating carrier choice for consumers." *See* Letter from Tamar Finn, Swidler Berlin Shereff Friedman, to Marlene Dortch, Federal Communications Commission, in WC 01-338 (dated Feb. 7, 2003) (NTELOS Feb. 7 Ex Parte Letter).

Moreover, the Commission should make no mistake that, notwithstanding the distance limitations of ADSL, line sharing represents an important opportunity to extend low-priced broadband service to rural areas – as Covad has already done. Covad currently provides line shared DSL service on more than 32,000 line shared loops nationwide in UNE rate zones 3 and higher.[3] Like Covad, NTELOS also provides broadband services in rural areas using line shared DSL. Specifically, NTELOS uses the line sharing UNE to provide broadband DSL service to 4100 consumers in rural Virginia and West Virginia.[4] New Edge Networks provides DSL services via linesharing in 350 small and medium-sized markets nationwide, offering the largest secondary market coverage of any DSL carrier.[5] These carriers, along with Covad, show that line sharing offers the promise of broadband competition to more than just urban America.

Line Sharing Pricing

In spite of these clear benefits of providing access to the line sharing UNE, some have raised concerns regarding the manner in which incumbent LECs should price competitors' access to line shared loops. In what follows, Covad explains the rationale behind the Commission's previously expressed linesharing UNE pricing methodology. To the extent this explanation may be deemed insufficient, it is clearly no answer to eliminate access to the linesharing UNE because of pricing concerns.[6] Rather, a rational discourse on the appropriate pricing methodology to recommend to state commissions would be a more fruitful discussion. Indeed, the Wireline Competition Bureau indicated last month that it intends to initiate later this year an examination of the application of TELRIC in determining UNE rates.[7] Covad submits that any supposed problem with line sharing pricing should be addressed in that TELRIC pricing proceeding. Covad further submits that the Commission should act decisively in the *Triennial Review Order* to preserve the line sharing UNE itself.

In particular, some have objected to competitors obtaining the high-frequency spectrum of the loop at zero cost, arguing that competitors should not obtain line shared

---

[3] These data were calculated from the UNE rate zone designations supplied on Covad's UNE bills. As of February 11, 2003, Covad was being billed for 29,625 line shared loops in zone 3, 1,828 line shared loops in zone 4, and 960 line shared loops in zone 5.

[4] *See* NTELOS Feb. 7 Ex Parte Letter.

[5] *See* New Edge Networks, "Network Coverage," at http://www.newedgenetworks.com/about/network/coverage/.

[6] *USA Today*, Feb. 10, 2003, "FCC Rule Change Could Boost DSL Prices".

[7] FCC Open Meeting, presentation of Wireline Competition Bureau entitled "Competition and Universal Service in a Dynamic Marketplace," at 15 (January 15, 2003).

loops for free.[8] As discussed below, Covad does not obtain line shared loops "for free." In fact, for every single line shared loop Covad purchases, Covad pays significant up-front and recurring charges to the ILEC to obtain the line shared loop. For example, in Covad's top ten markets, on average, Covad pays the ILEC recurring charges of approximately $4 for every line shared loop its purchases. Four dollars per loop is hardly "free."

Furthermore, state commissions have consistently set a zero cost only for one of the five line sharing rate elements, namely the high-frequency portion of the loop (UNE HFPL). It is true that 25 out of 34 of the states in which Covad offers service have established a zero rate for the UNE HFPL rate element. As discussed below, it is the ILECs themselves who submit the cost evidence that state commissions use in assigning a zero cost to the high frequency spectrum in the loop. Relying on the ILECs' own allocations of zero cost to the high frequency portion of the loop for their retail DSL services, the state commissions have assigned for competitors a zero cost to the UNE high-frequency portion of the loop. In doing so, the state commissions have followed the TELRIC pricing principles set out by the Commission in its *Line Sharing Order*. As explained below, those pricing principles serve the important TELRIC goals of (1) establishing cost-based, non-discriminatory pricing for UNE facilities; and (2) avoiding UNE rates that allow ILEC double-recovery of network costs from competitors and consumers. In submitting their own DSL loop cost allocations, the ILECs hold the keys to their own prison – and, under the *Line Sharing Order*, Covad is bound by the same cost allocation principles that apply to the ILEC.

Covad Pays ILECs for Line Shared Loops

The Commission should not mistakenly conclude that Covad somehow obtains a "free ride" when it purchases line shared loops. To the contrary, numerous costs associated with accessing the linesharing UNE are passed along to DSL carriers like Covad and WorldCom.[9] In the *Line Sharing Order*, the Commission recognized five types of direct costs that an incumbent LEC could incur to provide access to line sharing: "(1) loops; (2) OSS; (3) cross connects; (4) splitters; and (5) line conditioning."[10] The pricing framework established for the high-frequency portion of the loop – which, depending on the ILECs' ability or inability to show non-zero loop costs, could result in a zero recurring rate – applies only to the first of the five types of costs identified by the

---

[8] *See, e.g., Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, FCC 02-332, para. 213 (rel. Dec. 23, 2002) (*Qwest III 271 Order*).

[9] Under the UNE pricing standards in the 1996 Act, these charges may also include a reasonable profit for the ILEC apart from simply the cost of providing the network element. *See* 47 U.S.C. § 252(d)(1)(B).

[10] *Line Sharing Order*, 14 FCC Rcd at 20974, para. 136.

Commission, namely loop costs. Regardless of where the recurring UNE HFPL costs are set, however, competitors still face positive, non-zero costs for obtaining access to the UNE HFPL under the other four categories of costs identified in the *Line Sharing Order*.

For example, Covad pays upfront non-recurring charges for splitter installations, OSS upgrades and inquiries, cross-connects, and service orders to obtain access to the linesharing UNE. In addition, Covad also pays monthly recurring charges for the non-loop components of the linesharing UNE. These per-line costs include ILEC splitter charges, costs for ILEC splitter collocation, OSS charges and cross-connects. As of August 2002, the weighted average of these monthly recurring charges in Covad's top 10 markets was $3.99 per line.[11]

In short, Covad pays substantially for the linesharing UNEs it orders – not to mention the hundreds of millions of dollars Covad has invested in a facilities-based network architecture to serve residential consumers over lineshared loops. In no sense, therefore, does establishing a zero rate for the UNE HFPL result in a "free ride." Rather, as explained below, in states where the ILECs attribute zero loop costs to their own xDSL services, setting a zero rate for the UNE HFPL simply results in non-discriminatory, cost-based loop pricing, as required under the Act.[12] In other words, setting a zero rate for the UNE HFPL in these circumstances ensures that competitors like Covad face the same set of costs as the ILEC when they provide line shared DSL. Should the ILEC prove a higher cost to a state commission, Covad will of course pay that higher cost.

The Pricing Principles in the *Line Sharing Order*

The vast majority of the states in which Covad offers service have established a zero rate for one of the five line sharing rate elements, namely the UNE high-frequency portion of the loop. In doing so, the state commissions have applied the TELRIC methodology to the UNE HFPL, as they do in setting all UNE rates. As the Commission recently recognized, the *Line Sharing Order* provided guidance to the state commissions on the application of TELRIC to the UNE HFPL[13]:

> [T]he *Line Sharing Order* announced that "states may require that incumbent LECs charge no more to competitive LECs for access to shared local loops than

[11] This calculation includes only Covad's per-line costs, and does not include the additional recurring charges Covad pays the ILEC so that Covad can actually provide ADSL services over line shared loops (for example, DSLAM collocation, interoffice transport, etc.).

[12] *See* 47 U.S.C. § 252(d)(1)(A)(i-ii) (requiring that UNE pricing be cost-based and non-discriminatory).

[13] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

> the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."[14]

The Commission further noted in the *Line Sharing Order* that this pricing framework was consistent with TELRIC principles.[15] The *Line Sharing Order* stated:

> [b]y requiring incumbent LECs to provide access to the shared local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services.[16]

Furthermore, the *CALLS Order* stated:

> "[t]he *Line Sharing Order* concluded that states should not permit incumbent LECs to charge more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."[17]

For all the reasons already set out by the Commission in its *Line Sharing Order*, this pricing framework makes abundant sense: it is "a straightforward and practical approach for establishing rates consistent with the general pro-competitive purpose underlying the TELRIC principles."[18] The Commission's line sharing pricing rules prevent ILECs from price-squeezing competitive carriers out of the DSL market by requiring the UNE price to be cost-based. As with any other UNE, state commissions are simply required to ensure that the price for the HFPL UNE is based on the actual cost of providing that UNE. As it happens, the ILECs themselves provide the cost data that facilitates the determination of that price. The fact is that the ILECs routinely allocate zero cost to their federally tariffed xDSL services over line shared loops, because they fully recover loop costs from their rate structure for the underlying basic voice services sharing the same loop.[19] In other words, ILECs themselves routinely treat their xDSL

---

[14] *See Qwest III 271 Order* at para. 212 (quoting *Line Sharing Order*, 14 FCC Rcd at 20975, para. 138).

[15] *See Line Sharing Order*, 14 FCC Rcd at 20975-76, para. 139.

[16] *Line Sharing Order*, 14 FCC Rcd at 20976, para. 141.

[17] *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13001, para. 98 (2000) (*CALLS Order*).

[18] *Line Sharing Order*, 14 FCC Rcd at 20975-76, para. 139.

[19] *See Line Sharing Order*, 14 FCC Rcd at 20973, para. 133 ("The incumbent LECs' xDSL services are, in fact, sharing the local loop facility with their voice services. In setting prices for interstate xDSL services, moreover, incumbent LECs currently attribute little or no loop cost to those services.").

services as resulting in zero incremental loop costs. In the *Line Sharing Order*, the Commission quite reasonably concluded that the ILECs' allocation of loop costs between their own basic voice and xDSL services serves as the best evidence for the incremental loop costs resulting from competitive provision of line shared xDSL services:

> We find it reasonable to presume that the costs attributed by LECs in the interstate tariff filings to the high-frequency portion of the loop cover the incremental costs of providing xDSL on a loop already in use for voice services… Since the incremental loop cost of the high-frequency portion of the loop should be similar to the incremental loop cost of the incumbent LEC's xDSL special access service, this approach should result in the recovery of the incremental loop cost of the high-frequency portion of the loop.[20]

Accordingly, under the Commission's quite sensible framework, the ILECs hold the keys to their own prison. If the true incremental cost of the high frequency portion of the loop is a non-zero positive cost, they have only to submit cost studies to the state commissions demonstrating the correct allocation of positive loop costs between their own voice services and their own line shared xDSL services. If the ILECs submit cost evidence allocating all of the loop costs to basic voice services, however, under the *Line Sharing Order* pricing framework that serves as the best evidence of the incremental loop costs resulting from the provision of the UNE HFPL to the ILECs' competitors – namely, zero. Simply put, the Commission's HFPL pricing rules require the ILEC to prove that it actually suffers additional cost in provisioning the linesharing UNE. If the ILEC itself proves that no such additional cost exists – as the ILEC typically does in its DSL tariffs – the ILEC should not be permitted to recover from its competitor any costs that the ILEC does not incur.

In addition to ensuring that the ILECs' rates for UNE HFPL are cost-based, the Commission's pricing framework in the *Line Sharing Order* also helps ensure that the rates are non-discriminatory, as required by the 1996 Act.[21] Specifically, the *Line Sharing Order*'s pricing framework helps ensure that the ILEC does not double-recover from competitors for loop costs it already recovers through its basic voice service rate structure:

> [T]here could be a double recovery if the incumbent LEC recovered the full cost of the loop from its voice and related services while recovering an additional amount for loop costs from a competitive LEC for access to that same loop.[22]

[20] *Line Sharing Order*, 14 FCC Rcd at 20976, para. 140.

[21] *See* 47 U.S.C. § 252(d)(1)(A)(ii).

[22] *Line Sharing Order*, 14 FCC Rcd at 20975, para. 137.

Requiring competitors to pay for loop costs the ILEC already recovers separately from its regulated basic voice services would place competitors at a severe competitive disadvantage, by artificially inflating their costs to access loop facilities to provide xDSL services above the costs the ILEC incurs to access the same facilities. This would violate the Act's prescription that UNE rates be non-discriminatory.[23] Furthermore, allowing the ILECs to double-recover from CLECs the loop costs they recover from basic voice services would run afoul of the Act's proscription against subsidization of competitive services with regulated service revenues.[24] Specifically, requiring competitors to pay positive UNE HFPL rates while allowing ILECs to allocate zero loop costs to their own line shared services would enable the ILECs to subsidize their own xDSL services using basic voice service revenues. The only way to avoid creating such an implicit subsidy mechanism is to follow the pricing framework established in the *Line Sharing Order*, by requiring ILECs to allocate loop costs to UNE HFPL in the same manner they allocate loop costs to their own xDSL services.

It should come as no surprise that the ILECs routinely submit cost evidence to the states allocating zero loop costs to their line shared DSL services. In fact, the provision of line shared xDSL services should result in zero incremental loop costs. Unlike other services sharing common ILEC network facilities, the provision of line shared xDSL services requires no expansion or augmentation of the loop itself – the exact same loop already in place to provide voice services can be used to provide line shared xDSL. Accordingly, the provision of line shared xDSL service should result in no additional loop costs.[25] This unique facility stands in stark contrast to other situations where common network facilities are expanded or augmented to accommodate additional new services (such as a central office expansion, or a switch processor upgrade), resulting in positive incremental joint and common costs. If an ILEC, however, deems otherwise, it has only to submit cost evidence to the relevant state commission showing the additional loop costs resulting from the provision of xDSL service and the forward-looking allocation of the total loop costs between basic voice and xDSL services. Again, the ILECs hold the keys to their own prison.

State PUCs Consistently Apply the *Line Sharing Order* Pricing Principles

A number of state commissions have applied the pricing framework in the *Line Sharing Order* to set UNE HFPL rates according to the costs the ILECs allocate to their own line shared xDSL services. It should come as no surprise that, because the ILECs

[23] *See* 47 U.S.C. § 252(d)(1)(A)(ii).

[24] *See* 47 U.S.C. § 254(k). Specifically, the Act prohibits any telecommunications carrier from using its revenues from regulated services, such as ILEC basic voice service, to subsidize competitive services.

[25] In this connection, Covad notes that the Commission's current rules require an ILEC to provide access to the UNE HFPL only for loops where the ILEC remains the voice provider. *See* 47 C.F.R. § 51.319(h)(3).

routinely allocate no loop cost to their own xDSL services, the majority of these states have set the rate for the UNE HFPL at zero. In fact, as of December 2, 2002, of the 34 states in which Covad purchases the UNE HFPL to provide line shared services, 25 states (more than 73%) have approved a zero rate.[26] These figures show that the *Line Sharing Order*'s TELRIC pricing framework for the UNE HFPL is being faithfully applied by the vast majority of state commissions. Given that such a high percentage of state commissions have chosen not to depart from the pricing principles established in the *Line Sharing Order*, the argument that these pricing principles somehow force the ILEC to under-recover loop costs, or allow CLEC to obtain a "free ride," should be met with skepticism.

Conclusion

As Covad has explained in detail on the record, line sharing remains the *only* technically, economically, and practically feasible means of providing residential broadband DSL service to consumers. Furthermore, the entire record of the *Triennial Review* supports the preservation of the line sharing UNE; indeed, isolated opposition to preserving the line sharing UNE only seems to have surfaced in the very last stages of the *Triennial Review*. Moreover, Covad disagrees with any suggestion that concerns about the pricing of line shared loops is any grounds for elimination of the line sharing UNE. As discussed above, Covad does not get line shared loops for free, but pays on average nearly $4 in its largest markets to obtain line shared loops. Moreover, the *Line Sharing Order* sets forth a quite reasonable framework of non-discrimination in establishing the price of line sharing, including the UNE HFPL rate. If the ILECs believe that a non-zero rate is appropriate, they have the power to submit loop cost allocations to the state commissions demonstrating their loop costs for DSL. Notwithstanding these facts, if any concerns remain about the manner in which line sharing is priced, elimination of line sharing would be a grossly disproportionate response to such concerns. Instead, the appropriate forum to resolve concerns over line sharing pricing is a proceeding on TELRIC pricing, which the Wireline Competition Bureau has suggested it will begin soon. Covad therefore urges the Commission to act decisively in the *Triennial Review Order* to preserve the line sharing UNE.

Respectfully submitted,

/s/ Praveen Goyal

Praveen Goyal
Senior Counsel for Government &
Regulatory Affairs
Covad Communications Company

[26] *See* Letter from Praveen Goyal, Covad Communications, to Marlene Dortch, Federal Communications Commission, in WC 01-338, at 6 and n. 20 (dated Dec. 27, 2002).

COVAD™

600 14th Street, N.W., Suite 750
Washington, D.C. 20005
202-220-0400
202-220-0401 (fax)